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Note verbale dated 25 October 2004 from the Permanent Mission of Ukraine to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Ukraine to the United Nations presents its compliments to the Chairman of the Committee and has the honour to deposit the report of Ukraine pursuant to paragraph 4 of Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 25 October 2004 from the Permanent Mission of Ukraine to the United Nations addressed to the Chairman of the Committee

[Original: Russian]

National report of Ukraine on Security Council resolution 1540 (2004) of 28 April 2004 regarding non-proliferation of weapons of mass destruction

1. Participation of Ukraine in international non-proliferation regimes

Ukraine is pursuing a responsible and consistent policy in the area of arms control and the non-proliferation of weapons of mass destruction; it is an active participant in the regimes for the non-proliferation of weapons of mass destruction built around such basic international legal instruments as:

- The Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 (ratified by Ukraine on 16 November 1994);
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993 (ratified by Ukraine on 16 October 1998);
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10 April 1972 (ratified by Ukraine on 21 February 1975).

As one of the founders of the International Atomic Energy Agency (IAEA), Ukraine fully supports IAEA efforts in the area of the non-proliferation of nuclear weapons. That commitment has been demonstrated by, in particular, Ukraine's signature and strict observance of the Agreement between Ukraine and IAEA for the application of safeguards pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons, as well as its signature in August 2000 of a protocol additional to the Safeguards Agreement, which is intended to strengthen the IAEA safeguards regime (a draft law on ratification of the additional protocol was submitted to the Parliament for consideration on 30 July 2004).

Ukraine is a member of four of the five international export control regimes — the Wassenaar Arrangement (export controls for military and dual-use goods and technologies), the Missile Technology Control Regime, the Nuclear Suppliers Group and the Zangger Committee (control of international transfers of dual-use goods which are or could be used in nuclear activities).

Ukraine also adheres to the requirements of the Australia Group regarding exports of dual-use goods which could be used to produce chemical, biological or toxin weapons.

Ukraine recognizes the key role of the regimes described above in the sphere of non-proliferation of weapons of mass destruction and control over international transfers of weapons, and is in favour of developing them further and refining the mechanisms for cooperation among States parties within the framework of these regimes, particularly by stepping up cooperation in fields such as law enforcement,

exchanges of information and also collaboration between the national authorities responsible for export control issues.

Ukraine is also a participant in the Proliferation Security Initiative, and is prepared to contribute to the achievement of its aims, in accordance with the basic principles and norms of current international law and national legislation.

Ukraine provides no support in any form to State or non-State actors attempting to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons or their means of delivery. Any such support is prohibited under Ukrainian law.

Domestic legislation

Non-proliferation of nuclear weapons

(1) Declaration of State Sovereignty of Ukraine, adopted by the Verkhovna Rada on 16 July 1990, in which the Ukrainian Soviet Socialist Republic proclaims its intention to adhere to three non-nuclear principles: not to accept, not to produce and not to acquire nuclear weapons;

(2) Act on nuclear energy use and radiation safety, of 8 February 1995 (as amended on 24 June 2004);

(3) Cabinet of Ministers Decision No. 1525 of 18 December 1996 approving regulations for a State accounting and control system for nuclear materials (as amended on 9 August 2001);

(4) Act of 17 December 1997 ratifying the Agreement between Ukraine and IAEA for the application of safeguards pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (the Agreement entered into force for Ukraine on 22 January 1998);

(5) Supreme Soviet Decision of 5 May 1993 on the participation of Ukraine in the Convention on the Physical Protection of Nuclear Material;

(6) Act on the physical protection of nuclear facilities, nuclear materials, radioactive wastes and other sources of ionizing radiation, of 19 October 2003.

Non-proliferation of biological and chemical weapons

(1) Act ratifying the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, of 16 October 1998;

(2) Decree of the Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic ratifying the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 21 February 1975.

In the interests of fully implementing the Convention on Chemical Weapons, Ukraine has adopted the following legislative and regulatory acts:

(1) Presidential Decree No. 50 of 25 January 1999 on the programme of implementation of the Convention on the Prohibition of the Development,

Production, Stockpiling and Use of Chemical Weapons and on Their Destruction for 1999 to 2008;

(2) Presidential Decree No. 1080 of 26 August 1999 on the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;

(3) Cabinet of Ministers Decision No. 2230 of 9 December 1999 on assistance in the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;

(4) Cabinet of Ministers Decision No. 920 of 6 June 2000 on regulations governing the procedure for inspections in accordance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;

(5) Cabinet of Ministers Decision No. 109 of 7 February 2001 approving regulations governing the procedure for the preparation of national declarations pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

2. Export control

The legal basis for State export control consists of the Constitution, laws, acts of the President and Cabinet of Ministers, other legislative and regulatory acts, and also international treaties by which the Verkhovna Rada has agreed to be bound.

The legislation on export control includes the following legislative and regulatory acts:

- Act No. 549-IV, of 20 February 2003, on State control over international transfers of military and dual-use goods;
- Act No. 959-XII, of 16 April 1991, on foreign trade activities;
- The Criminal Code;
- The Code of Administrative Offences;
- Presidential Decree No. 1265, of 27 December 2001, on the State Export Control Service;
- Presidential Decree No. 1265, of 17 April 2002, on issues relating to the State Export Control Service;
- Presidential Decree No. 861, of 15 July 1999, on the procedure for establishing (withdrawing) restrictions on the export of goods in accordance with Ukraine's international obligations;
- Regulations on State export control in Ukraine, adopted by Presidential Decree No. 117, of 13 February 1998;
- Cabinet of Ministers Decision No. 384 of 22 April 1997 approving regulations governing the procedure for control of the export, import and transit of goods which may be used to produce chemical, bacteriological (biological) and toxin weapons;

- Cabinet of Ministers Decision No. 767 of 15 July 1997 approving regulations governing the procedure for conducting expert analyses in the sphere of export control;
- Cabinet of Ministers Decision No. 125 of 4 February 1998 approving regulations governing the procedure for State monitoring of negotiations to draw up foreign trade agreements (contracts) for international transfers of military and dual-use goods;
- Cabinet of Ministers Decision No. 1807 of 20 November 2003 approving the procedure for State control of international transfers of military goods;
- Cabinet of Ministers Decision No. 86 of 28 January 2004 approving the procedure for State control of international transfers of military goods;
- Cabinet of Ministers Decision No. 838 of 8 June 1998 approving regulations governing the procedure for granting entities engaged in foreign trade the right to export and import military goods and goods containing information that constitutes a State secret;
- Cabinet of Ministers Decision No. 920 of 27 May 1999 approving regulations governing the procedure for the provision of safeguards and State monitoring of obligations regarding the use, for declared purposes, of goods subject to State export control.

In the interests of Ukraine's national security and compliance with its international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery and restriction of transfers of conventional weapons, **regulations on State export control in Ukraine** were adopted under Presidential Decree No. 117, of 13 February 1998. The regulations establish a procedure for State control of international transfers of weapons, military and specialized technology and certain types of raw material, inputs, equipment and technology which could be used to manufacture them.

Among the principles of State export control policy referred to in the **Act on State control over international transfers of military and dual-use goods** are the binding force of the obligation to fulfil Ukraine's international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery, to establish State control of international transfers of military and dual-use goods and also to implement measures to prevent such goods from being used for terrorist and other illegal purposes.

The *preamble* specifies that the Act regulates State control of international transfers of military and dual-use goods in order to protect Ukraine's national interests and ensure that it complies with its international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery.

Article 4 indicates that one of the principles of State export control policy is the binding force of the obligation to fulfil Ukraine's international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery, implement measures to prevent such goods from being used for terrorist and other illegal purposes, and cooperate with international organizations and foreign States in the Sphere of State export control with the aim of strengthening international security and stability, including preventing the proliferation of weapons of mass destruction and their means of delivery.

Article 10 sets forth State export-control procedures designed to prevent the proliferation of weapons of mass destruction and their means of delivery. According to this article, export control procedures may in some cases be applied even to goods which do not appear on the export control lists (the so-called "catch-all" principle).

As an example, if the central authorities responsible for export control receive information that there is an intention or likelihood that goods of any kind not appearing on the control lists will be used, in their country of end use, in developing, manufacturing, stockpiling, testing, repairing, servicing, modifying, modernizing, operating, managing, storing, detecting or identifying weapons of mass destruction and their means of delivery, or in their proliferation, those authorities have to notify the State Export Control Service, which may apply State export control procedures to the goods in question.

State export control also applies to the export or temporary export of goods not appearing on the control lists if the goods are being exported or temporarily exported from Ukraine to a State against which a full or partial embargo on the supply of such goods has been imposed by a United Nations Security Council resolution, by another international organization or by national legislation.

If any exporter is informed by the State Export Control Service or becomes aware through any other channel that goods of any kind intended for export or temporary export to another State may be used, wholly or partly, for development manufacture, stockpiling, testing, repair, servicing, modification, modernization, operation, management, storage, detection, or identification or for military purposes, in a State covered by a full or partial embargo on the supply of military goods, imposed by a United Nations Security Council resolution by another international organization or national legislation, that exporter must apply to the designated export control authority in order to obtain a licence to export the goods in question, regardless of whether or not they appear on the lists.

As a result, the non-proliferation requirements oblige all exporters to apply for an export licence if they become aware that the goods are intended for use in an activity connected with the production or manufacture of weapons of mass destruction or their means of delivery, or an activity otherwise connected with such matters.

As the authority responsible for State export control, the **State Export Control Service** is required by article 6 of the Act to assist with activities connected with international transfers of goods or to limit or ban such activities where there are grounds to believe that the goods are connected with weapons of mass destruction or are intended for the production of such weapons or their means of delivery, or where there are no adequate safeguards (obligations) regarding the end use of the goods.

By Cabinet of Ministers Decision No. 86 of 28 January 2004, the **Procedure for State control of international transfers of dual use goods** was adopted. The Procedure defines the features of State control over international transfers of dual-use goods, specifically goods which can be used to produce conventional weapons, military or specialized technology, missiles or nuclear, chemical, biological or toxin weapons, regardless of the circumstances of supply, the nature of the contracts, the customs regime or other aspects of the transfer.

The Procedure applies to all entrepreneurs in Ukraine registered with the State Export Control Service as entities undertaking international transfers of goods and engaged in export, import, transit or any other form of foreign trade activity, including manufacturing, science and technology or participation as demonstrators in international exhibitions and fairs.

The Procedure therefore excludes the possibility of international transfers of dual-use goods which could be used by non-State actors to produce weapons of mass destruction or their means of delivery.

In accordance with the provisions of this Procedure, and also of the **Procedure for State control of international transfers of military goods** approved by Decision No. 1807 of the Cabinet of Ministers of 20 November 2003:

It is prohibited to export individual goods to countries against which the United Nations Security Council has imposed an embargo on the export of such goods and also in the event that expert analyses in the area of State export control there are grounds to believe that they are intended for:

- The production of weapons of mass destruction or their means of delivery;
- Use for terrorist or other illegal purposes;
- Use in activities connected with the production of nuclear explosive devices or in activities connected with the nuclear fuel cycle which are not under IAEA safeguards;
- Use in activities connected with the acquisition, production, stockpiling or use of pathogenic agents (pathogens) and toxins as biological and toxin weapons or their components.

Lists of Dual-Use Goods

Lists of dual-use goods that may be used to produce a missile (means of delivery of weapons of mass destruction) or a nuclear, chemical or biological weapon are set forth in annexes 2, 3, 4 and 5, respectively, of the **Procedure for State control of international transfers of dual-use goods**.

Goods included in the lists that are transported across the customs borders of Ukraine are subject to mandatory customs clearance according to the procedure established under the legislation of Ukraine.

3. Customs control

In accordance with Act No. 549 IV, of 20 February 2003 on State control over international transfers of military and dual-use goods, Presidential decrees and executive orders and other legislative and regulatory acts in the area of State export control, the State Customs Service, within its jurisdiction, together with the State Export Control Service, the Administration of the State Border Service and other ministries and departments, takes steps on an ongoing basis to prevent the proliferation of weapons of mass destruction and their means of delivery and also other goods subject to export control.

Transit across customs borders and customs clearance of weapons of mass destruction and their means of delivery are handled by customs agencies exclusively on the basis of licences from the State Export Control Service.

The State Customs Service also keeps its departments constantly informed about resolutions of international organizations concerning States against which United Nations sanctions are being applied, and also about goods that are transported across the customs borders of Ukraine, in order to ensure strict compliance with such resolutions.

In order to comply with Ukraine's international obligations arising from resolutions of the United Nations Security Council and prevent the illegal proliferation of goods subject to export control (including weapons of mass destruction and their means of delivery) and also to enhance the processing of goods in this category as a whole, the State Customs Service is elaborating a new Procedure on transit across the customs borders of Ukraine and customs clearance of goods subject to export control.

4. Border control

The **Procedure on joint inspection of road transport vehicles that are used for transporting export goods**, approved by joint Order No. 202/163, of 28 February 2004, of the administration of the State Border Service and the State Customs Service, entered into force on 1 May 2004.

The ministries and departments concerned have agreed to joint plans to combat terrorism at the State borders.

Border control of ships arriving in the ports of Ukraine from high-risk countries and control over their stay in the territorial sea and inland waters of Ukraine have been strengthened.

Measures are being taken to control the transport of military and dual-use goods across the State borders.

Admission into Ukraine of nationals from high-risk countries and countries in armed conflict is granted after thorough checks and interviews are conducted.

The control of the arrival (departure) of military forces (both the armed forces of Ukraine and those of foreign States) in (from) Ukraine has been strengthened.

Twenty-seven points of entry for trains across the State borders have been equipped with 65 radiation-measuring devices (MKS-05 Terra).

There are plans:

1. With the assistance of the United States of America, to equip points of entry at the Ukrainian-Moldovan border with fixed radiation monitoring devices;

2. Within the framework of the Second Line of Defence Programme, with the assistance of the United States Department of Energy, 20 points of entry for air and sea traffic across the State borders will be equipped with fixed radiation monitoring devices.

5. Physical protection

Ukraine has been a party to the Convention on the Physical Protection of Nuclear Material since 1993.

Ukraine is in favour of strengthening the Convention by making the relevant amendments to the text of the Convention, which Ukraine has taken an active part in elaborating. Ukraine also supports the need to convene a conference to adopt such amendments in accordance with article 20 of the Convention.

The Ministry of Internal Affairs is taking the necessary steps on an ongoing basis to strengthen the protection and defence of high-risk nuclear, chemical and other technological facilities and enhance military readiness and the combat readiness of the military forces of the Ministry of Internal Affairs which ensure the physical protection of those facilities.

Designated divisions have been established within the military forces of the Ministry to deal with any problems and to combat manifestations of terrorism at such facilities. Joint exercises are conducted every year at all high-risk nuclear, chemical and other facilities to test the forces and equipment involved in their physical protection.

The Ministry of Internal Affairs and the Ministry of Fuel and Energy take joint measures to enhance the level of physical protection of the nuclear power and atomic facilities of Ukraine in accordance with IAEA requirements.

Systems of computerized access control and video surveillance of the perimeters of facilities and vitally important centres have been introduced at all nuclear power stations of Ukraine. Systematic efforts are being made to replace security equipment whose service life has expired.

6. Liability for the proliferation of weapons of mass destruction

Liability for violation of the laws concerning State control of the non-proliferation of weapons of mass destruction is governed by the Criminal Code, the Code of Administrative Offences (arts. 188 and 212) and the Act on State control over international transfers of military and dual-use goods (section IV, Prevention of violations and liability in the area of State export control).

In accordance with article 24 of the **Act on State control over international transfers of military and dual-use goods**, offences in the area of State export control include:

(1) Conduct of activities relating to international transfers of goods without obtaining a licence, safeguards conclusion or document under the established procedure;

(2) Conduct of international transfers of goods on the basis of licences, safeguards conclusions or documents obtained by submitting counterfeit documents or documents containing inaccurate information;

(3) Conclusion of foreign trade agreements (contracts) concerning international transfers of any goods or participation in their implementation in any way other than as specified by the Act on State control over international transfers of military and dual-use goods if the exporter becomes aware that such goods may

be used by a foreign State or foreign business for the purpose of producing weapons of mass destruction or their means of delivery;

(4) Conduct of international transfers of goods even though the exporter has become aware that the goods will be used for other purposes or by other end-users than those specified in the foreign trade agreement (contract) or related documents on the basis of which the licence, safeguards conclusion or international import certificate was obtained;

(5) Deliberate concealment of information relevant to the decision on whether to grant licences, safeguards conclusions or international import certificates;

(6) Conduct of international transfers of goods in violation of the conditions specified in the licences, safeguards conclusions or international import certificates, including after making changes to the foreign trade agreement (contract), without the consent of the designated export control authority, concerning the names and identifying information of exporters, importers, brokers and end-users and also the descriptions of goods, end-use requirements and submission of the relevant safeguards documents;

(7) Conduct of negotiations concerning the conclusion of foreign trade agreements (contracts) on the export of military goods, as well as dual-use goods, in respect of the supply of which a partial embargo has been imposed on the foreign State concerned, without obtaining authorization from the designated export control authority;

(8) Failure to submit or late submission of reports and relevant documents to the designated export control authority concerning the outcome of the negotiations specified in subparagraph 8 of this article and also concerning international transfers of military and dual-use goods actually carried out on the basis of licences or certificates obtained and also on the use of such goods for their declared purposes;

(9) Obstruction of the performance of the official duties of staff of the designated export control authority and other State bodies involved in State export control during the performance of their official duties or failure to comply with legitimate requests by such persons;

(10) Unwarranted refusal to provide information and documents requested by the designated export control authority or other competent State agencies involved in State export control or the deliberate falsification or concealment of such information and documents;

(11) Deliberate destruction of documents relating to the conclusion or execution of foreign trade agreements (contracts) on the conduct of international transfers of goods on the basis of which licences, safeguards conclusions or international import certificates were received until the end of the period during which they are required to be retained under article 22 of the Act on State control over international transfers of military and dual-use goods.

Article 25 of this Act establishes the liability of individuals and legal entities involved in international transfers of goods for violation of the requirements of the law in the area of export control specified in article 24 (paras. 1-11 cited above).

The designated export control authority imposes fines for violations by individuals and legal entities involved in international transfers of goods, as follows:

Under paragraphs 1, 2 and 3: 150 per cent of the value of the goods which were involved in the relevant international transfer;

Under paragraphs 4, 5 and 6: 100 per cent of the value of the goods which were involved in the relevant international transfer;

Under paragraphs 7 and 11: 1,000 times individual income tax exemption limit;

Under paragraph 8: 500 times the individual income tax exemption limit;

Under paragraphs 9 and 10: 100 times the individual income tax exemption limit.

This article also provides that the designated export control authority, besides imposing the aforementioned fines, may revoke or suspend the licence, safeguards conclusion or international import certificate for the conduct of international transfers of goods which it granted to such exporter or revoke its registration with the authority as an entity authorized to conduct international transfers of goods.

Criminal liability for the proliferation of weapons of mass destruction

Any development, production, stockpiling or use of weapons of mass destruction stems from the decisions and actions of individuals, whether they are officials, private businessmen, weapons experts or terrorists. However, the international conventions prohibiting such weapons have almost no provisions on individual liability. States are therefore faced with the need to introduce appropriate provisions in their legislation to establish criminal liability for activities linked with the proliferation of weapons of mass destruction.

Thus the Criminal Code of Ukraine contains eight articles which in one way or another are concerned with criminal liability for activities involving the potential proliferation of weapons of mass destruction: article 258 (Terrorist act); article 261 (Attacks on facilities which contain objects posing a heightened risk to the environment); article 321 (Illegal production, manufacture, acquisition, transport, transfer and stockpiling for sales purposes or sale of toxic and potent substances); article 326 (Infringement of the rules on handling microbiological or other biological agents or toxins); article 333 (Illegal export from Ukraine of raw materials, inputs, equipment and technology for weapons manufacture, and also military and specialized technology) article 439 (Use of weapons of mass destruction); article 440 (Development, production, acquisition, stockpiling, sale and transport of weapons of mass destruction); and article 441 (Ecocide).

Article 333 establishes criminal liability for violation of the established procedure for conducting international transfers of goods subject to State export control. Such actions are punishable by a fine of 100 to 200 times the individual income tax exemption limit or by custodial restraint for up to three years or imprisonment for the same term, with deprivation of the right to hold certain offices or engage in certain activities for up to three years. In the event that such actions are committed repeatedly or by an organized group, they are punishable by a term of up to five years of custodial restraint or the same term of imprisonment, with

deprivation of the right to hold certain offices or engage in certain activities for up to three years.

Article 439. Use of weapons of mass destruction

1. The use of weapons of mass destruction prohibited by international treaties by which the Verkhovna Rada has agreed to be bound is punishable by a term of 8 to 12 years' imprisonment;

2. In the event that such acts cause the death of persons or other grave consequences they are punishable by a term of 8 to 15 years' imprisonment or life imprisonment.

Article 440. Development, production, acquisition, stockpiling, sale and transport of weapons of mass destruction

The development, production, acquisition, stockpiling, sale and transport of weapons of mass destruction prohibited by international treaties by which the Verkhovna Rada has agreed to be bound is punishable by a term of 3 to 10 years' imprisonment.

Code of Administrative Offences

Article 188 of the Code of Administrative Offences establishes administrative responsibility of individuals and legal entities for non-compliance with legitimate requests by staff of the designated export control authority. Such violations, are punishable by a fine on nationals of 15 to 20 times the individual income tax exemption limit and a fine on officials of 20 to 50 times the individual income tax exemption limit.

Moreover, in accordance with article 212, violations of the State export control legislation is punishable by a fine on nationals of 15 to 20 times the individual income tax exemption limit and a fine on officials of 20 to 50 times the individual income tax exemption limit in the event of:

(1) Conduct of negotiations concerning the conclusion of foreign trade agreements (contracts) on the export of military goods, as well as dual-use goods in respect of the supply of which a partial embargo has been imposed on the foreign State concerned, without obtaining authorization from the designated export control authority;

(2) Failure to submit or late submission of reports and relevant documents to the designated export control authority concerning the outcome of the negotiations specified in paragraph 1 of this article and also concerning international transfers of military and dual-use goods actually carried out on the basis of licences or certificates obtained and also on the use of such goods for their declared purposes;

(3) Deliberate destruction of documents relating to the conclusion or execution of foreign trade agreements (contracts) on the conduct of international transfers of military and dual-use goods on the basis of which licences, safeguards conclusions or international import certificates were received until the end of the period during which they are required by law to be retained.